

PETITION FOR ZONING RE-CLASSIFICATION SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R.C.-5 zone to an B.L. zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: _____ Legal Owner(s): _____
(Type or Print Name) _____
Signature _____
Address _____
City and State _____
Attorney for Petitioner: _____
Edward C. Covahey, Jr. _____
(Type or Print Name) _____
Signature _____
Address _____
City and State _____
Attorney's Telephone No.: _____
614 Bosley Ave., Towson, MD 21204
Address Phone No.
828-9441

BARC-Form 1

Item No. 5 Cycle 1
Robert J. Morris, et al
Reclassification Petition
April 29, 1981

determined that the descriptions must also be revised.

Of course all of the above comments are contingent upon obtaining approval from the Board of Appeals that this petition can be accepted and scheduled for a hearing even though it appears to be in violation of Section 1A00.3.A of the regulations.

If you have any questions concerning the enclosed comments, please feel free to contact me at 424-3391. Notice of the specific hearing date, which will be between September and December of 1981, will be forwarded to you in the future.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

ENCLOSURE

Enclosures

cc: David W. Pallas, Jr. & Sons, Ltd.
7005 Harford Road
Baltimore, Maryland 21234

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
from R.C. 5 to B.L. - C.R.
NW/S Belair Rd., 30' SE from Int. of
Jerusalem and Belair Rds., 11th District : OF BALTIMORE COUNTY

ROBERT J. MORRIS, et al, Petitioners : Item No. 5

ORDER TO ENTER APPEARANCE

To the Honorable, Members of Said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 10th day of April, 1981, a copy of the foregoing

Order was mailed to Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, Maryland 21204, Attorney for Petitioners.

RECEIVED
BALTIMORE COUNTY
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COMM. DIV.
BY: J. A. S.

R-13-65

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Robert J. Morris, et al
NW/S Belair Rd., 30' SE of
Jerusalem Road
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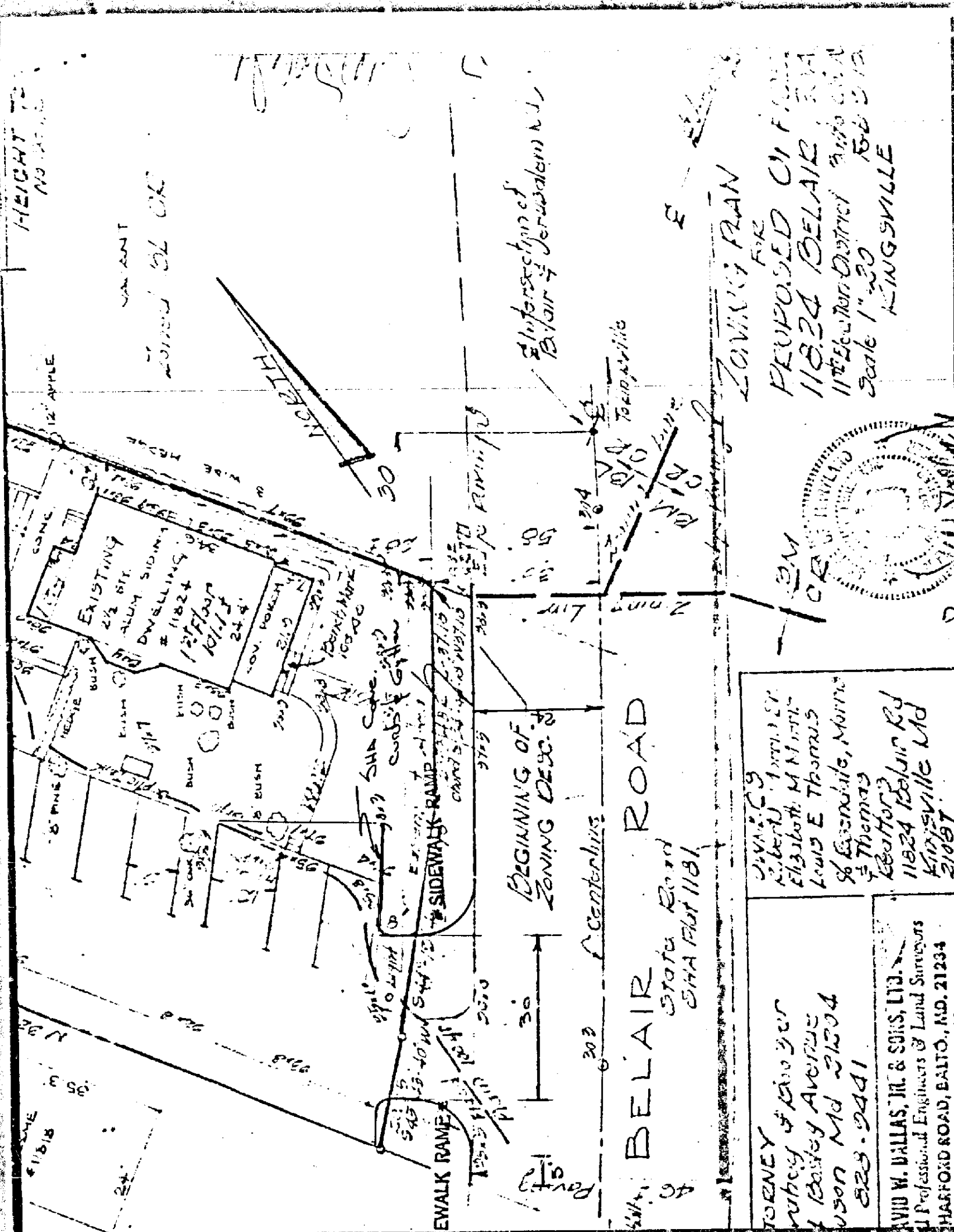
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BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211
NORMAN E. GERBER
DIRECTOR

April 14, 1981

Mr. Walter A. Reiter, Jr., Chairman
Board of Appeals
Room 219 - Court House
Towson, Maryland 21204

Dear Mr. Reiter:

Comments on Item #5, Zoning Cycle I, April, 1981, are as follows:

Property Owner: Robert J. and Elizabeth M. Morris
Location: NW/S Belair Road 30' S/E of Jerusalem Road
Existing Zoning: RC-5
Proposed Zoning: BL-CR
Acres: 0.383
District: 11th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The site plan should be revised to show the following:

Four (4) foot high compact screening must be provided where the parking area is adjacent to or across the street from residential premises.

All driveways and parking areas must be paved.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Current Planning and Development

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
(301) 494-3550
STEPHEN E. COLLINS
DIRECTOR

March 30, 1981

Mr. Walter A. Reiter, Jr.
Chairman, Board of Appeals
Office of Law
Court House
Towson, Maryland 21204

Item No. 5 - ZAC - Meeting of March 16, 1981
Property Owner: Robert J. & Elizabeth M. Morris
Location: NW/S Belair Road 30' S/E of Jerusalem Road
Existing Zoning: R. C. 5
Proposed Zoning: BL-CR
Acres: 0.383
District: 11th

Dear Mr. Reiter:

The present RC 5 zoning can be expected to generate approximately 10 trips per day and the proposed offices can be expected to generate 20 trips per day.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Engineer Associate II

MEF/bza

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE & COUNTY HEALTH OFFICER

April 2, 1981

Mr. Walter Reiter, Chairman
Board of Appeals
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Reiter:

Comments on Cycle I, #5, Zoning Advisory Committee Meeting of March 16, 1981, are as follows:

Property Owner: Robert J. & Elizabeth M. Morris
Location: NW/S Belair Road 30' S/E of Jerusalem Road
Existing Zoning: R.C. 5
Proposed Zoning: BL-CR
Acres: 0.383
District: 11th

The building structure is presently served by a water well and sewage disposal system which did not appear to be failing at the time of inspection.

Very truly yours,
Ian J. Forrester
Ian J. Forrester, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF:mgt

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
625-7310
PAUL H. REMCKE
CHIEF

March 19, 1981

Mr. William Hammond cc: Walter Reiter
Zoning Commissioner
Chairman of Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Robert J. & Elizabeth M. Morris

Location: SW/S Belair Road 30' S/E of Jerusalem Road

Item No.: 5 Zoning Agenda Meeting of March 16, 1981

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED BY: *George M. W. W. W.*
Planning Group
Special Inspection Division

Noted and

Approved:

George M. W. W. W.
Fire Prevention Bureau

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Walter Reiter
Board of Appeals, Chairman
Mr. Charles E. Burnham
Plans Review Chief - Permits and Licenses
FROM: Cycle I - 1981
SUBJECT: RE: Cycle Zoning March 24, 1981

PROPERTY OWNER: Robert J. & Elizabeth M. Morris
LOCATION: NW/S Belair Road 30' S/E of Jerusalem Road
EXISTING ZONING: R.C. 5
PROPOSED ZONING: BL-CR
ACRES: 0.383
DISTRICT: 11th

ITEM NO. 5

This structure, in order to comply with the height and area requirements of the Code would require the access stair to the top level be removed. This would then result in a 2 story structure with a non-habitable attic, as permitted by Code for the proposed use. Other Code requirements shall be adhered to by the applicant.

This will require a change of occupancy permit as well as an alteration permit to upgrade the structure to the proposed use. Handicap Code compliance with the State Code is required.

NOTE: All comments are based on data provided on site plan and data provided by the Zoning Advisory Committee. Comments in many cases cannot be more specific or advisory due to the limited information.

Charles E. Burnham
Charles E. Burnham
Plans Review Chief

CEB:rrj
CC: Nick Commodari

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 23, 1981

Mr. Walter Reiter
Chairman, Board of Appeals
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #1 March 16, 1981

RE: Item No: 5
Property Owner: Robert J. & Elizabeth M. Morris
Location: NW/S Belair Rd. 30' S/E of Jerusalem Rd.
Present Zoning: R.C. 5
Proposed Zoning: BL-CR

School Situation

School	Enrollment	Capacity	Over/Under
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Comment: Acreage too small to have an effect on student population.

Student Yield With:

Existing Zoning	And	Proposed Zoning
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Elementary

Junior High

Senior High

Very truly yours,

Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp

STATEMENT ATTACHED TO PETITION FOR RE-CLASSIFICATION OF
ROBERT J. MORRIS, et al

The County Council for Baltimore County committed error in reclassifying the subject property as R.C. 5 instead of classifying same as Business Local. The error committed by the County Council related to the following factors which were not afforded full consideration by the Council:

1. The property immediately to the north of the subject site is in fact zoned B.L. - C.R. and was so zoned at the time of the Councilmanic hearings.

2. The property immediately to the south of the site is in fact owned by Baltimore County, Maryland and was acquired by Baltimore County, Maryland as part of the Baltimore County Flood Plan Program. This property is presently improved by a vacant 2 1/2 story frame dwelling house.

3. The subject property prior to the adoption of the Comprehensive Zoning Maps by the County Council of Baltimore County was used and utilized as a real estate office and there was permanently displayed on said property a sign advertising the real estate services of the real estate brokerage firm of Rosendale, Morris & Thomas.

4. That extending the B.L. zoning line south in conformity with the existing B.L. - C.R. zoning line terminate at the northern boundary line of the Baltimore County property would in fact constitute good zoning and planning and would straighten the zoning lines as drawn and eliminate ambiguity and confusion caused by the manner in which said line is presently drawn.

Edward C. Covahey, Jr.
Edward C. Covahey, Jr.
Atty. for Petitioners

IN THE MATTER OF THE APPLICATION OF ROBERT J. MORRIS, ET AL FOR REZONING OF PROPERTY - NW/4 BELAIR ROAD 30' SE from intersection of JERUSALEM AND BELAIR ROADS 11th DISTRICT FROM R.C. 5 to B.L.-C.R.

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. R-82-63

ORDER OF DISMISSAL

Petition of Robert J. Morris, et al, for reclassification from R.C. 5 to B.L.-C.R. on property located on the northwest side of Belair Road 30 feet southeast from the intersection of Jerusalem and Belair Roads, in the Eleventh Election District of Baltimore County.

WHEREAS, the Board of Appeals is in receipt of an Order of Dismissal of petition filed August 18, 1983 (a copy of which is attached hereto and made a part hereof) from the attorney representing the Petitioner in the above entitled matter; and

WHEREAS, the said attorney for the said Petitioner requests that the petition filed on behalf of said Petitioner be dismissed and withdrawn as of August 18th, 1983.

IT IS HEREBY ORDERED this 24th day of August, 1983, that said petition be and the same is dismissed.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

William R. Evans

William T. Hockett

ROBERT J. MORRIS, et al
NW/4 Belair Rd.
30' SE from Int. of
Jerusalem and Belair Rds.

BEFORE THE COUNTY BOARD OF APPEALS R-82-65

ORDER OF DISMISSAL

Mr. Clerk:

Please dismiss the above-captioned matter without prejudice.

Edward C. Cavanaugh, Jr.
Atty. for Petitioners
614 Bosley Avenue
Towson, MD 21204

ROBERT J. MORRIS, ET AL
NW/4 Belair Road
30' SE from Int. of
Jerusalem and Belair Rds.
11th District

BEFORE THE COUNTY BOARD OF APPEALS Item No. 5

RE: Reclass. from R.C. 5 to B.L. - C.R.

PETITIONER'S MEMORANDA IN SUPPORT OF THE BOARD OF APPEALS HEARING AND DETERMINING THE QUESTION OF THE CONSTITUTIONALITY OF ZONING REGULATION 1A00.3A1

scheme laid out under the Code and must fall as violative of due process rights.

Under Section 2-58.1(b) of the Code, persons submitting an application for rezoning must detail the reasons and justification for such request. They must also meet the Board's "rules of practice and procedure". Petitioner in the instant case has fulfilled these requirements and no challenge to his petition is based on the inadequacy of his disclosures or on a failure to meet any of the Board's criteria. The petition was recommended for rejection, however, on the ground that Regulation 1A00.3A1 prevents acceptance of the application unless the requisite showing of public sanitation facilities could be made.

This Regulation, however, was adopted prior to the change in Section 2-58.1 which resulted in the listing of various factors which were to be considered in reviewing a rezoning petition. See Code §2-58.1(j)(2). The new Code provision would, therefore, displace Regulation 1A00.3A1 because the basis for rejecting the RC rezoning, i.e., the lack of public sewer and water facilities, is now clearly stated to be only one of many factors to be considered in a reclassification petition hearing. See Code §22-31 (providing that regulations inconsistent with Code provisions must fall). Failure to adopt this position would mean that the petitioner would have his petition rejected on the basis of only one of the criteria presented in Code §2-58.1(j)(2) and would have that rejection take place without benefit of the full hearing on the factors presented in §2-58.1(c)(h) which is mandated by Code §§2-58.1(c)-(h). This would mean that the statutory scheme for rezoning, i.e., petition, hearing and determination based on facts presented at hearing, would be cut off by the enforcement

I. May the County Board of Appeals Address Questions as to the constitutionality of Zoning Ordinances?

The issues presently facing the Board relate to attacks on the zoning laws' constitutionality as written and as applied to the subject property. The question presented is whether the Board may address these issues or whether such determinations lie outside the scope of the Board's authority. For the reasons discussed below, it is Petitioner's contention that the Board is the proper forum in which to bring these challenges and that the Board possesses the power to determine, at least initially, the constitutionality of the regulations in question.

The Maryland case law establishes that the question of the constitutionality of an ordinance, as applied to a certain person or property, should be challenged initially in the administrative forum if an appeal to the courts from the administrative body's determination is provided by statute. See Poe v. Baltimore City, 241 Md. 303 (1965); Hartman v. Prince George's County, 264 Md. 320 (1971); Prince George's County v. Blumberg, 288 Md. 275 (1980). Under the Baltimore County Code, rezoning (reclassification) decisions are initially heard by the County Board of Appeals, Baltimore County Code §2-58.1 and Baltimore County Charter §602(e), and the determinations of that body are reviewable by the Circuit Court, Baltimore County Charter §604. This type of scheme was what the Poe court had in mind when it determined that the constitutional issues, as well as all other matters, should be raised initially before the administrative bodies controlling the field prior to a court challenge of the ordinance.

One recognized exception to this general method of procedure is where the ordinance is being challenged as

unconstitutional on its face. In this situation, the courts have ruled that an aggrieved party may take his challenge directly to the courts without exhausting his administrative remedies. See Poe, 241 Md. 303 (1965); Harbor Island Marina v. Calvert Co., 286 Md. 303 (1979). These cases, however, do not mandate the commencement of action in a circuit court for persons challenging an ordinance on its face, they instead give the aggrieved party the option of pursuing his administrative remedy or applying directly for judicial action on the matter.

In the present situation, it is quite clear that the Board may address Petitioner's challenges, both as to the constitutionality of the ordinance as applied and as to its constitutionality on its face, and resolve those issues prior to any judicial action on this matter. Since the Board must hear the issue as to the constitutionality of the ordinance as applied, it would be both logical and the most economical use of time and judicial resources to also address at the same time the issue of the constitutionality of the ordinance on its face.

II Is Zoning Regulation 1A00.3A1 Unconstitutional on its Face or as Applied to the Petitioner's Property?

A. Regulation 1A00.3A1 violates Petitioner's rights to due process because it fails to follow the statutory scheme mandated for the processing of rezoning applications.

Under the powers vested in Baltimore County, as a charter county, the County may enact zoning laws for "the protection and promotion of public safety, health, morals, and welfare". Article 25A Md. Annot. Code §5(x). Pursuant to these powers, the County Code has given the County Board of Appeals interim power to reclassify property. Baltimore County Code §2-58.1

Section 2-58.1(b) of the Baltimore County Code (hereinafter "Code") provides that a petition for reclassification of zoning may be filed by the legal owner of property with the Board. The petition is to include the reasons for the reclassification and give details of the petitioner's case. The Code also provides that the petition may not be accepted for filing unless it meets the Board's "rules of practice and procedure".

Once a petition is accepted by the Board, it is incumbent upon that official to set in motion a procedure which eventually results in a hearing on the petition. Baltimore County Code §§22-58.1(c)-(u). At this hearing the Board is to examine certain criteria laid out in Code §2-58.1(j)(2) and make a determination based on an analysis of those factors. In order to grant a reclassification, the Board must determine that a change has occurred in the character of the neighborhood or that there was an error in the original zoning. This conclusion must be based on the elements listed in Code §2-58.1(j). Baltimore Co. Code §2-58.1(n).

It is Petitioner's contention that Regulation 1A00.3A1 is unconstitutional in that it circumscribes the procedure laid out in the County Code for rezoning and deprives the Petitioner of due process of law by foreclosing him from receiving a hearing on his petition and from a determination of the propriety of granting his petition on the basis of facts which the County Council has determined must be considered. The regulation prohibits the filing of a petition to reclassify an RC zone unless it is shown that the subject property is currently serviced or will be serviced within two years by public water and sewage facilities. Such a total prohibition on petitioning the Board is directly contrary to the rezoning

of Regulation 1A00.3A1, a blatant violation of Petitioner's due process rights since he is not able to proceed by means of the process due him under the statutory enactments.

The infringement on Petitioner's due process rights by Regulation 1A00.3A1 becomes even more obvious when the Regulation is considered against the backdrop of the Maryland Code. Under Article 25A of the Maryland Annotated Code, the State of Maryland has established rules for the formation and operation of Chartered Counties. This Article allows a chartered county, of which Baltimore County is one, to establish a County Board of Appeals. See Art. 25A Md. Annotated Code §5(u). According to this provision, the Board of Appeals may take rezoning decisions upon petition by an interested person but only after "notice and an opportunity for hearing and on the basis of the record before the board." Regulation 1A00.3A1 clearly breaches this statutory procedure, a scheme which must be followed since the county only derives its authority over zoning from the delegation of that authority from the State and must abide by constraints placed on it by the State in pursuing its delegated prerogatives. The Regulation allows the Board to reject a petition, in effect make a rezoning determination, on the basis of just one criteria, i.e., lack of public sewer and water lines, without giving notice to interested parties or holding a hearing in accordance with the requirements of §5(u) of Article 25A of the Maryland Code. Such action oversteps the County's delegated power and violates the Petitioner's, as well as all other RC rezoning applicants', rights to due process of law.

The Regulation under attack also goes beyond the scope of §22-19 of the Code which deals with the proper purposes for regulations. That section allows regulations which "facilitate

adequate provision for...water, sewerage..." in order to promote "health, safety, morals [or the] general welfare" of the community. The Regulation in issue goes well beyond the mandate of this section and eliminates whole classes of uses which may in no way endanger the community. This result is brought about because the Regulation does not seek to "facilitate" adequate sewer and water hook-ups but instead imposes a blanket prohibition on private sewer or water facilities on properties which are seeking reclassification. The overreaching of statutory authority evinced by the Regulation throws it into the realm of unconstitutional restraints on the Petitioner's use of his property and causes the Regulation to collapse under the weight of due process demands.

Another drawback of Regulation 1A00.3A1 is that the rejection of the reclassification petition is based on facts, the determination of which is a quasi-judicial function and requires a hearing. This classification of the resolution of the sewer and water determination is based on the recognition by the Code that a full hearing on a rezoning petition is necessary and that a determination of the impact of the sewer and water conditions is one of the cogent factors in addressing the rezoning issued. The Maryland Court of Special Appeals has stated that "[a]dministrative boards in general may be said to act in a quasi-judicial capacity insofar as they have the duty to hear and determine facts and, based on them, to make decisions." Stewart Inv. Co. v. Bd. of Comm'rs., 38 Md. App. 381 (1978). It is clear that the issue of rezoning involves the hearing and determination of facts and that based on those facts decisions are made. Regulation 1A00.3A1 has the effect of a hearing and determination of facts which puts its actions

substantial relation to the object sought to be attained. The regulation must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not have the offensive character of those which caused the problem sought to be ameliorated. [citations omitted]. The regulation must not impress unnecessary and excessive restrictions on the use of private property.

J.D. Construction Corp. v. Board of Adjustment, 290 A. 2d 452, 455 (N.J.) (1972). See also Davidow v. Board of Adjust. of TP. of So. Brunswick, 302 A.2d 136 (N.J.) (1973); Charles v. Diamond, 360 N.E.2d 1295 (N.Y.) (1977).

The question then present is whether Regulation 1A00.3A1 bears a reasonable relationship to ends sought to be achieved by means of its application and whether those means go beyond the scope of what is required in order to protect the public welfare. The purpose of the regulation appears to be to protect landowners on adjacent property from the health hazards which may accompany a possible reclassification of the zoned property due to increased sewerage or water flow. To accomplish this result, the Regulation prohibits all reclassifications in the RC zone unless public sewer and water facilities are available or will be available within two years. Do the means here reasonably and without undue hardship accomplish the desired end?

Petitioner's position is that the method chosen to control the health hazard go beyond what is reasonable and constitute arbitrary and capricious action on the part of zoning authorities. The Code itself recognizes the problem presented in regard to adequate sewer and water facilities and provides in §2-58.1(j)(2) of the Code that such considerations will be weighed in determining the propriety of granting a rezoning petition. To single out one factor, as the Regulation does, to determine the fate of a rezoning petition flies not only in the

in the realm of a quasi-judicial determination, i.e., a rejection of a rezoning application on the basis of the lack of public sewer and water.

Other jurisdictions view rezoning decisions as also falling within the ambit of quasi-judicial actions. In Snyder v. City of Lakewood, 542 P.2d 371 (Colo.) (1975), a very helpful test for determining whether an action is quasi-judicial was laid out. The Colorado court held that an action is quasi-judicial if there exists:

(a) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that a body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; and (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law.

542 P. 2d at 374. The County rezoning statutes clearly meet this test and would fall into a classification of quasi-judicial actions. See Code §2-58.1

Washington State has also recognized that rezoning decisions are quasi-judicial in nature.

But in amending a zoning code, or reclassifying land thereunder, the same body, in effect, makes an adjudication between the rights sought by the proponents and those claimed by the opponents of the zoning change... Although important issues of public policy may permeate a zoning amendment, the decision has a far greater impact on one group of citizens than on the public generally... Finally, legislative hearings are generally discretionary with the body conducting them, whereas zoning hearings are required by statute, charter, or ordinance. The fact that these hearings are required is itself recognition of the fact that the decision making process must be more sensitive to the rights of the individual citizen involved.

(emphasis added) Fleming v. City of Tacoma, 502 P. 2d 327, 311 (Wash.) (1972). See also Faseno v. Board of County Comm'rs of Washington Cty., 507 P.2d 23 (Or.) (1973).

face of logic but also in the face of the statutory mandate of 2-58.1(j)(2).

In addition, the existence or absence of public sewerage facilities in no way bears a rational relationship to the health hazard sought to be remedied by the Regulation. While the existence of public sewer and water connections would definitely protect the public from threats due to unsanitary conditions, the absence of such public utilities does not in any manner indicate a threat to public health. Private water and sewer systems could well provide the needed facilities for various reclassified uses and the Regulations ban on the use of such facilities can find no rational foundation upon which to stand. This argument is particularly pertinent to the Petitioner's land since it lies within a RC5 zone and the regulations under that section indicate that one of the purposes of those regulations is to "[p]rovide a minimum lot size which is sufficient to provide...on-lot sewer and water systems." Balto. Co. Zoning Regs. 1A04.1B4. Since private sewer and water facilities are recognized by the Regulations as viable in large parts of the districts and since the rezoning provisions of the Code provide adequate protection against rezoning where health will be endangered by private sewer and water systems, it seems that Regulation 1A00.3A1 goes well beyond the bounds of reasonable regulation and operates in an arbitrary and capricious manner and should, therefore, fall in the face of due process demands.

B. Regulation 1A00.3A1 is a violation of the equal protection clause of the United States Constitution.

"Equal protection" means no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and

It is plain that by the provisions of the County Code, as expressed in §2-58.1, that a rezoning decision is to be based on an exploration and determination of facts. The relevant facts to be examined are plainly stated in §2-58.1(j)(2). What Regulation 1A00.3A1 does is to undermine this entire factual, i.e. quasi-judicial, process by forbidding the acceptance of a petition which precludes a hearing on the merits of the application. The Regulation, in effect, makes a factual determination which normally would be made under §2-58.1 of the Code and in so doing rejects the petition for rezoning without giving the applicant with the opportunity to be heard as to other factors which might, under §2-58.1(j)(2), be determinative of the issue. This type of action was condemned in Stewart where the court stated:

"Administrative action may be arbitrary or unreasonable if it is not based on or supported by sufficient facts or proper factual inferences... 'to refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action.'... Administrative action is arbitrary and unreasonable if it is not based upon or supported by sufficient facts or proper factual inferences. Refusal to consider evidence introduced or making finding without supporting evidence is arbitrary action."

38 Md. App. 381, 393-94. The Regulation prevents the Petitioner from presenting evidence which has a bearing on the rezoning issue and allows the Commissioner to reject the rezoning without supporting evidence, both actions being contrary to the explicit scheme for rezoning laid out in Code §2-58.1. Such action violates the Petitioner's due process rights by subjecting him to arbitrary and capricious actions of the zoning authorities and by depriving him of his right to a hearing before the body which is making a quasi-judicial

under like circumstances." Supermarkets Gen. Corp. v. State, 286 Md. 611, 623 (1979). Defined thusly, equal protection entails the like treatment of like persons under like conditions. Regulation 1A00.3A1 fails to afford this type of protection in general and, in particular, fails to provide equal protection to the petitioner in the present matter.

The Regulation proscribes the acceptance of rezoning petitions by anyone in an RC zone unless it is shown that public sewer and water lines are available or will be provided within two years. This regulation denies a potential petitioner ever the right to be heard on his application on this single ground. However, it is recognized that private sewer and water systems are adequate to serve RC zone property, See Reg. §1A04.1B4, and that certain uses within those districts do not have to have such public hook-ups despite the fact they may be equally or more hazardous to the public health than many rezoned properties would be. See o.g., 1A04.25,7 (permitting, as of right, use in RC zones of hospitals and schools without any requirement for public sewer or water facilities). The distinction drawn between persons in Petitioner's position, i.e., reclassification applicants, and those using the RC zone for like or more hazardous activities, at least in relation to sewerage and water complications, is a purely arbitrary distinction without foundation in reason or logic and violates the equal protection rights of all rezoning applicants and the rights of the current petitioner.

This unequal and arbitrary discrimination is also evinced by the failure of the Regulation to impose a like restriction on those who seek special exceptions or variances from the RC zoning uses. Special exception and variance petitions and reclassification petitions both seek exemption from the use

determination in regard to his rights. See Hyson v. Montgomery County, 242 Md. 55 (1965).

The arbitrary and capricious nature of the Regulation also provides adequate grounds upon which to successfully attack the Regulation in light of due process demands. Due process is violated and a law must be rejected if the ends sought to be accomplished by the law are not reasonably related to the means taken to achieve those ends. The Court of Appeals phrased this proposition in the following manner in addressing a zoning issue:

It is basic to the law of property that a man shall be allowed the widest use of his property consonant with the protection of his neighbors. In order to justify therefore a restriction of that use, it must be shown that such restriction is in some manner related to the police power of the sovereign.

Wakefield v. Kraft, 202 Md. 136, 142 (1953). The police power entails the promotion of the public, health, morals, safety or welfare. See also Norbeck v. Montgomery County, 254 Md. 59, 67 (1969) (stating that the regulation must bear a "necessary" relationship to the general public interest or welfare" that is presumed to be related to the act).

A similar view of the requirements of due process and the proper function of zoning laws has been adopted by commentators and other states. Rathkopf has stated that zoning regulations are "arbitrary" if there is no reasonable relation between the evils reasonably apprehended and the provisions of the ordinance enacted pursuant to the police power to prevent or cure them..." Rathkopf, The Law of Zoning and Planning Vol.1 §4.05 at 4-26. The New Jersey courts have taken a similar approach and express their position in the terms that

Substantive due process demands that zoning powers, like all police power, must be reasonably exercised. A zoning regulation must not be unreasonable, arbitrary or capricious. The means selected must have a real and

restraints imposed on zoning districts and the general method for achieving relief from the restrictions is basically the same under the Code. Compare Code §§22-26 and 2-58.1. While variances, special exceptions and rezoning are, therefore, very similar as to position and rights, the Regulation in issue subjects the rezoning applicant to a substantial burden not encountered by the special exception and variance applicant thus discriminating between the groups without any reasonable justification or basis for such unequal treatment. A special exception or variant use in a district may impose the same types of hazards which a rezoning use would entail yet the Regulation totally prevents the latter Petitioner's application from being processed and denies the rezoning applicant a hearing to determine whether in fact his use of the land will present the type of hazard sought to be alleviated by the Regulation. At the same time, an applicant for a variation will be permitted to attempt to make the requisite showings which will entitle him to a use not otherwise allowed under the RC zone. Such unwarranted and wholly unfounded distinctions cannot withstand the rigors of a challenge under the equal protection clause.

The Regulation also provides an unwarranted discrimination between rezoning applicants in RC zones and all other rezoning applicants. As noted earlier, rezoning under Code §2-58.1 provides that the issue of sewer and water facilities is but one factor to be considered in deciding a rezoning case and is to be considered in the context of a hearing. However, an applicant in a RC zone will have his petition denied solely on one criteria, i.e., the absence of public sewer and water hook-ups, and will not be allowed to present his position at a hearing. This distinction is groundless since there is no

indication that sewer and water problems present a greater hazard to public health in RC as opposed to other zoning districts. Indeed, it would appear that the existence of private sewer and water systems is recognized in RC zones as discussed earlier, and that from this recognition it would appear that sewer and water problems would present no greater a burden on RC zones than on other zoning areas. This being the case, the unique burden placed on RC rezoning applicants by means of Regulation 1A00.3A1 is an invidious discrimination not founded on reason and cannot be upheld in the face of the equal protection clause. Absent some showing that private water and sewer systems, by their nature, present a unique and distinctive problem to the public health in RC zones, the effect of the Regulation in preventing a petition from being accepted and a hearing being held on the instant petition, and all RC rezoning applicants, is an illegal discrimination between the present Petitioner, and other RC rezoning petitioners, and all other rezoning applicants because it places unreasonable and discriminatory restraints on the former.

C. Petitioner is Being Denied His Right to Petition His Government.

The Regulation in question, on its face, denies the instant applicant a right to petition his government in order to effectuate a change in existing law. The right to present ones case to the zoning authorities and attempt to justify a change in zoning is recognized by the provisions of §2-58.1 of the Code. This right has been cut off by Regulation 1A00.3A1, however, since a potential applicant cannot even have his position put before the proper authorities or have his position tested in an open hearing on the matter. A Massachusetts court

stated the issue properly when it announced that "[e]very citizen acting in good faith has an undoubted right to petition the legislative branch of the city government to change an ordinance and to advance by fair and honorable means the advantages that he believes will accrue from the adoption of the proposed change." Pitman v. City of Medford, 45 N.E. 2d 973, 977 (Mass.) (1942). The present petitioner, and all other RC rezoning applicants, only wish to be able to put forth their position and present the reasons they feel a change is necessary. The current Regulation, however, chokes off their voice and robs them of the public forum which other rezoning applicants are entitled to, and, effectively stifling the rights to be heard of a segment of the community and robbing the community of the possible beneficial input of these persons views. Such an ordinance should not be allowed to stand especially when the harm at which it is directed can be easily policed by less restrictive devices currently in effect, i.e., Code §2-58.1.

In light of the foregoing considerations, Petitioner asserts that Regulation 1A00.3A1 cannot withstand the challenges levelled at it with respect to the due process and equal protection rights of the Petitioner and all other applicants for rezoning of RC tracts. The Regulation also tramples upon the right of the current applicant and all other RC rezoning applicants rights to petition their government. It is, therefore, requested that the Board declare Regulation 1A00.3A1 unconstitutional and direct that Petitioner's application for rezoning be accepted and processed by the Board per the requirements of code §2-58.1(c)-(h).

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
from R.C. 5 to B.L.-C.R.
NW/S Belair Rd., 30' SE from Int. of
Jerusalem and Belair Rds., 11th District : OF BALTIMORE COUNTY

ROBERT J. MORRIS, et al, Petitioners : Item No. 5

ORDER TO ENTER APPEARANCE

To the Honorable, Members of Said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2183

I HEREBY CERTIFY that on this 10th day of April, 1981, a copy of the foregoing Order was mailed to Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hession, III
John W. Hession, III

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
April 2, 1981

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

Re: Petition for reclassification from
R.C. 5 to B.L.-C.R. for
Robert J. Morris, et al. Ca. No. 5
11824 Belair Road, Kingsville

Dear Mr. Covahey:

The Board has in hand your petition for reclassification of the property described therein. The petition seeks a change in the classification of the property from its present R.C. zoning to a zone other than one in the R.C. category. It would appear that this petition should not have been accepted for filing since the Baltimore County Zoning Regulations pertaining to reclassifications for R.C. zoned properties, specifically indicate, in Section 1A00.3A.1, that:

"No petition to reclassify an R.C. zone or part thereof as other than an R.C. zone may be accepted for filing by the Zoning Commissioner unless -

a. The Capital Program, duly adopted Baltimore County master or comprehensive plans and the 'county plan' required under Article 43, Section 387C of the Annotated Code of Maryland 1957, with amendments as codified in the 1971 Replacement Volume and 1974 Cumulative Supplement, show that the property under petition is to be serviced by public sewerage and water-supply systems within TWO years after the date the petition is submitted."

We have been advised by the Zoning Supervisor for Baltimore County that there is no indication within the public Capital Program that the property for which you seek reclassification is to be serviced by public sewerage and water-supply systems within the next two years, and we note that you did not attach to your petition any documentation to indicate that the property is, in fact, within an area to be serviced with sewerage and water supply within that time.

Edward C. Covahey, Jr.
Atty. for Petitioner
614 Bosley Avenue
Towson, MD 21204
828-9441

I HEREBY CERTIFY that on this 10th day of April, 1981, a copy of the foregoing Memorandum was mailed to John W. Hession, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204.

Edward C. Covahey, Jr.

RECEIVED
BALTIMORE COUNTY
MAY 17 2 34 PM '81
CLERK'S OFFICE
BY

Page two - Edward C. Covahey, Esquire - April 2, 1981

The Board is prepared to issue an order dismissing your petition on the ground that it was improperly accepted. However, before doing so, the Board will extend to you the period of fifteen days within which to request, should you desire, a hearing before the Board limited to the question of why said petition should not be dismissed as proposed. If you desire such a hearing on that issue, please notify the Administrative Secretary of the Board within the fifteen day period following the date of this letter and a hearing date will be scheduled.

Very truly yours,

William T. Hockett
William T. Hockett, Acting Chairman

WTH:cc
cc: Mr. J. Dyer

494-3180

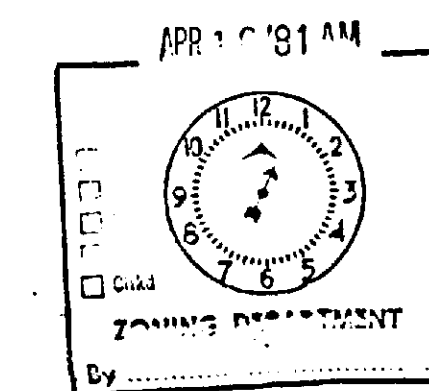
County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 7, 1981

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

ITEM NO. 5 ROBERT J. MORRIS, et al
NW/S Belair Rd. 30' SE from Int. of
Jerusalem and Belair Rds.
11th District
Re: Reclass. from R.C. 5 to B.L.-C.R.
April 25
ASSIGNED FOR: TUESDAY, MAY 12, 1981, at 9:30 a.m.
cc: Robert J. Morris, et al Petitioners
Edward C. Covahey, Jr., Esq. Attorney for Petitioners
J. W. Hession, Esq. People's Counsel
N. E. Gerber Planning
J. Hoswell "
J. Dyer Zoning
W. Hammond "
N. Commodari "
J. Byrnes, III "



June Holmen, Secy.

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 9, 1981

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

ITEM NO. 5 ROBERT J. MORRIS, et al
NW/S Belair Rd. 30' SE from Int. of
Jerusalem and Belair Rds.
11th District
Re: Reclass. from R.C. 5 to B.L.-C.R.
April 25
ASSIGNED FOR: TUESDAY, MAY 12, 1981, at 9:30 a.m.
cc: Robert J. Morris, et al Petitioners
Edward C. Covahey, Jr., Esq. Attorney for Petitioners
J. W. Hession, Esq. People's Counsel
N. E. Gerber Planning
J. Hoswell "
J. Dyer Zoning
W. Hammond "
N. Commodari "
J. Byrnes, III "

June Holmen, Secy.

RECEIVED
BALTIMORE COUNTY
MAY 11 4 15 PM '81
COUNTY BOARD
OF APPEALS
BY

County Board of Appeals
Room 219 Court House
TOWSON, MARYLAND 21204

April 15, 1981

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

ITEM NO. 5 ROBERT J. MORRIS, et al
NW 1/4 Belair Rd. 30' SE from Int. of
Jerusalem and Belair Rds.
11th District
Re: Reclass. from R.C. 5 to B.L. - C.R.

Assigned for hearing on Tuesday, May 12, 1981, at 9:30 a.m., has been POSTPONED
by the Board at the request of counsel for the Petitioners, and

REASSIGNED FOR: THURSDAY, APRIL 23, 1981, at 9:30 a.m.

cc: Robert J. Morris, et al Petitioners

Edward C. Covahey, Jr., Esq. Counsel for Petitioners

J. W. Hession, Esq. People's Counsel

N. E. Gerber Planning

J. Hoswell "

J. Dyer Zoning

W. Hammond "

N. Commodari "

June Holmen, Secy.

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
March 11, 1982

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

Re: Case No. R-82-65
Robert J. Morris, et al

Dear Mr. Covahey:

On August 18, 1981, we notified you that there were pending in the Circuit Court three cases that could possibly have serious impact on the petition for rezoning in the above entitled case which was pending before the Board of Appeals.

At that time it appeared that we could get a final judgment on these three cases in a matter of months. Since then the request for settlement of these cases by Summary Judgment has been denied, and there appears to be no movement toward a full trial or any final judgment.

In view of these developments, the Board wishes to advise you that we will entertain your request for rescheduling of this case if you so desire.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:e

cc: Robert J. Morris, et al

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
March 3, 1983

Edward C. Covahey, Jr., Esq.
614 Bosley Avenue
Towson, Maryland 21204

Re: Case No. R-82-65
Robert J. Morris, et al

Dear Mr. Covahey:

There is pending before the Board the above entitled case which is a petition for reclassification from R.C. 5 to B.L.-C.R. on property which is located on the northwest side of Belair Road 30' south-east of Jerusalem and Belair Roads in the Eleventh Election District of Baltimore County, which has been, at your request, held in abeyance.

The Board has been informed that there is presently being applied for a new petition on this same property by a new owner. If the original petition is no longer valid or if for any reason you do not wish to proceed, please advise us so that we may dismiss this case and clear the docket.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:e

cc: N. Commodari

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
August 24, 1982

Edward C. Covahey, Jr., Esq.
614 Bosley Avenue
Towson, Md. 21204

Re: Case No. R-82-65
Robert J. Morris, et al

Dear Mr. Covahey:

Enclosed herewith is a copy of the Order of Dismissal passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Encl.

cc: Robert J. Morris, et al
Mr. Gene Ray
Richard L. Colgan
John W. Hession, III, Esq.
N. E. Gerber
J. G. Hoswell
J. E. Dyer
A. E. Jablon
Board of Education

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

August 20, 1981

NOTICE OF HEARING

RE: Petition for Re-Classification
NW 1/4 Belair Rd., 30' SE of Jerusalem Rd.
Robert J. Morris, et al, et al
Case #R-82-65, Item 5, Cycle 1

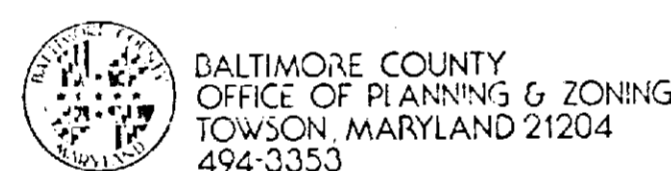
TIME: 10:00 A.M.

DATE: September 16, 1981

PLACE: Room 218, Courthouse, Towson, Maryland

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

9/16 - Case continued WTH



WILLIAM E. HAMMOND
ZONING COMMISSIONER

October 5, 1981

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: Petition for Re-classification
NW 1/4 Belair Rd., 30' SE of Jerusalem Rd.
Case #R-82-65, Item 5
Robert J. Morris, et al - Petitioners

Dear Mr. Covahey:

This is to advise that _____ is due for the 2nd full page add of the cycle 1 billing. You have already been billed for the 1st full page add as well as for the individual posting and advertising of this property. All bills must be paid before an order is issued. This is your final bill.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland, 21204, as soon as possible.

Very truly yours,

William E. Hammond
Zoning Commissioner

WEH:klr

David W. Dallas, Jr. and Sons

Registered Professional Engineers & Land Surveyors

7006 HARFORD ROAD - BALTIMORE, MARYLAND 21234

PHONE: (301) 254-4555

David W. Dallas, Jr., P.E., R.L.S.

Michael B. Dallas, P.L.S.

ZONING DESCRIPTION

11824 Belair Road, Kingsville

BEGINNING for the same on the northwest side of Belair Road at a point distant 40 feet southwesterly from the centerline intersection of the paving of Jerusalem Road with the centerline of Belair Road, thence binding on the northwest side of said Belair Road the three following courses and distances as shown on State Highway Administration Plat No. 1181:
southerly by a line curving to the west with a radius of 2053.48 feet for a distance of 37.18 feet,
south 44 degrees 19 minutes 40 seconds west 43.78 feet,
and south 45 degrees 43 minutes 40 seconds west 20.65 feet
thence leaving said road and running on, outlines the three following courses and distances:
north 32 degrees 53 minutes 00 seconds west 170.57 feet,
north 39 degrees 40 minutes 34 seconds east 98.61 feet,
and south 33 degrees 57 minutes 40 seconds east 172.19 feet
to the place of beginning.

CONTAINING 0.383 acres of land more or less.



PETITION FOR RE-CLASSIFICATION

11th DISTRICT

ZONING: Petition for Re-Classification
LOCATION: Northwest side of Belair Rd., 30 ft. Southeast of Jerusalem Rd.
DATE & TIME: Wednesday, September 16, 1981 at 10:00 A.M.
PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning: R.C. 5
Proposed Zoning: B.L.

All that parcel of land in the Eleventh District of Baltimore County

Being the property of Robert J. Morris, et al, as shown on plat plan filed with the Zoning Department.

Hearing Date: Wednesday, September 16, 1981 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

September 10, 1981

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: Petition for Re-classification
NW/4 Belair Rd., 30' SE of Jerusalem Rd.
Robert J. Morris, et ux, et al, Petitioners
Case # R-82-65

Dear Mr. Covahey:

This is to advise you that \$55.25 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,
WILLIAM E. HAMMOND
ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 101670

DATE: 10/15/81 ACCOUNT: 01-662

REPLY NECESSARY
☐ YES ☐ NO DATE: 10/12/81

tioners

AMOUNT: \$55.25

RECEIVED FROM: Robert J. Morris,
FOR: Posting & Advertising of Case #R-82-65

check in the amount of
ng.

552546

VALIDATION OR SIGNATURE OF CASHIER

June 30, 1981

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: Item No 5 - Cycle 1
Petitioner - Robert J. Morris, et al
Reclassification Petition

Dear Mr. Covahey:

This is to advise you that \$77.15 is due for the first advertising of the above property. Two additional bills will be forwarded to you in the near future. All bills must be paid before an order is issued.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,
WILLIAM E. HAMMOND
ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 096983

DATE: 7/10/81 ACCOUNT: 01-662

AMOUNT: \$77.15

RECEIVED FROM: Robert J. Morris,
FOR: Posting & Advertising of Item 5-Cycle 1

771546

VALIDATION OR SIGNATURE OF CASHIER

David W. Dallas, Jr. and Sons

Registered Professional Engineers & Land Surveyors

7008 HANFORD ROAD - BALTIMORE, MARYLAND 21234

PHONE: (301) 254-4555

David W. Dallas, Jr., P.E., R.L.S.

Michael B. Dallas, P.L.S.

ZONING DESCRIPTION

11824 Belair Road, Kingsville

BEGINNING for the same on the northwest side of Belair Road at a point distant 30 feet southeasterly from the centerline intersection of the paving of Jerusalem Road with the centerline of Belair Road, thence binding on the northwest side of said Belair Road the three following courses and distances as shown on State Highway Administration Plat No. 1181: southerly by a line curving to the west with a radius of 2053.48 feet for a distance of 37.18 feet, south 44 degrees 19 minutes 40 seconds west 43.78 feet, and south 45 degrees 43 minutes 10 seconds west 20.65 feet thence leaving said road and running on outlines the three following courses and distances: north 32 degrees 53 minutes 00 seconds west 170.57 feet, north 39 degrees 40 minutes 34 seconds east 98.61 feet, and south 33 degrees 57 minutes 40 seconds east 172.19 feet to the place of beginning.

CONTAINING 0.383 acres of land more or less.



ITEM NO. 5
ROBERT J. MORRIS, et al
N/W 4 Belair Rd. 30' from Int. of Jerusalem and Belair Rds.
11 District
Reclassification from R.C to B.L. - C.R.

Hearing held on Thursday, April 23, 1981, Towson, Maryland
at 10:00 o'clock P.m.

This is a portion of the transcript and deals with the Chairman's statements as to the procedure to follow in this case.

APPEARANCES:

EDWARD C. COVAHEY, JR., Esquire
On behalf of the Petitioners

JOHN W. HESSIAN, Esquire
On behalf of the People's Counsel

Reported by:
Carol A. Beresh
Court Reporter

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204

April 23, 1981

Members
County Board of Appeals

Gentlemen:

On April 23rd we heard the case by petitioner Robert J. Morris which brought to the Board's attention fundamental policies of this Board vis-a-vis legislative direction from the County Council. The petitioner challenged the constitutionality of Section 1A00.3.A.1 of the Baltimore County Zoning Regulations. In doing so he presented the question of whether (1) the Board should consider constitutional issues at all and (2) whether this law is so obviously unconstitutional on its face that the Board should overturn it.

Jack Hessian reminded the Board that past policy has been not to decide constitutional issues. He disagrees with this position and feels that we should decide them, not only in this case, but in future cases as well. The petitioner's counsel agreed, and both will submit memoranda on these issues.

As these questions are fundamental to Board policy, I would appreciate your considering these issues and providing your input as to how we should proceed.

Very truly yours,

John V. Murphy, Acting Chairman

cc: Mr. W. A. Reiter
Mr. W. T. Hackett
Mr. J. A. Miller
Mr. L. B. Spurrier
Mrs. P. Phipps

THE CHAIRMAN: Back on the record, if you would, Carol.

During the period in which we were off the record there has been a general discussion among counsel as to the procedures. Some recommendations were made to the Board, and the Board has discussed among its members its approach to answering some of the questions raised this morning.

In regard to stating the issue, the Board sees the following as the proper procedures in the case.

The Board should answer the question whether boards such as this board may consider constitutional issues; that is, do we have the proper legislative authority to do so.

The second issue is whether this law as challenged this morning by the petition is so obviously unconstitutional on its face that given the right to review constitutional law from one above, the Board could find that the law is unconstitutional.

The Board then would reserve the question of whether the facts associated with this particular petitioner's challenge to the law and the facts of this case would entitle the petitioner to a reclassification.

The Board requests the counsel for each side to supply memorandum on the first two issues only, and to do so within thirty days of this hearing, each side having ten days thereafter to review and rebut memorandum by the opposite side.

The Board will hold its decision on the first two issues

until a written opinion on those two issues and memorandum concerning the same are received.

MR. HESSIAN: Sir, you have one other case, the identity of which I can't give you off the top of my head, that's scheduled for a similar motion hearing such as this sometime in early May.

Would it not be appropriate -- I think Newton Williams represents the petitioners in that case -- to notify him as to what has happened here this morning, and invite him -- postpone a further hearing on this case, which will rescue a board day -- in other words, no sense coming in and assembling a board just to tell Newton what was done in this case; and ask him also to participate as if the two cases were consolidated for the purposes of submission.

THE CHAIRMAN: Any objection from members of the Board?

(No response.)

THE CHAIRMAN: All right. Mr. Hessian, we accept that suggestion and take it for a step in the right direction.

MR. HESSIAN: In fairness, just as to the part where the Chairman was spelling out what the status is, if you would give us a copy of that we can send that along to Mr. Williams, say here's what happened.

MR. COVAHEY: I am in favor of sending it to Newton Williams. The more the horses, the lighter the load is for me.

MR. HESSIAN: Ed, what is the sense of going through this

sequence and presenting him with a fait accompli sometime in May?

The Chairman: Fine. With that then we will hear from you -- we will delay Mr. Williams hearing and hear from you all within the time limits.

MR. COVAHEY: Fine. Thank you.

MR. HESSIAN: Thank you.

(Whereupon, the hearing concluded at 10:05 o'clock a.m.)

COVAHEY & BOOZER
ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER
MARK S. DEVAN
ROGER L. LLIOTT
J. MELVILLE TOWNSEND

August 20, 1981

AREA CODE 301
828-9441

William T. Hackett, Chairman
Baltimore County Board of Appeals
Room 219 Court House
Towson, MD 21204

(9-16-81)

RE: Item #5
Robert J. Morris, et al

Dear Mr. Hackett:

With respect to your letter dated August 18, 1981 and all of the terms and conditions contained therein, please treat this letter as a request that the Court continue the above-captioned case pending definitive action from the Courts as set forth in your letter.

I commend you and the Board for calling this matter to counsel's attention as it may obviate the multiplicity of litigation.

Thanks.

Very truly yours,

Edward C. Covahy, Jr.
Edward C. Covahy, Jr.

ECC/pa
cc: Mr. Robert J. Morris

RECEIVED
BALTIMORE COUNTY
APR 21 9 28 AM '81
CC BY: J. L. S. D.

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
August 26, 1981

Edward C. Covahy, Jr.
614 Bosley Avenue
Towson, Md. 21204

Re: Item #5 - #R-82-65
Robert J. Morris, et al

Dear Mr. Covahy:

Your request for postponement of this case will be granted by the County Board of Appeals. However, since the applicable provisions of the Charter require that the case and the assigned hearing date be advertised, both in the newspaper and by posting, it will be necessary that we continue with this procedure. Further, to make certain that all requirements are met, it will be necessary that on the morning of the day upon which the case is assigned, the record be opened and the fact of the postponement and the grounds therefore be read into the record, and the postponement be formally granted.

Accordingly, it is requested that you, or someone representing you, appear on the morning of the scheduled date so that we can complete this formality, which is necessary for the Petitioner's protection. You need not, of course, be accompanied by either parties or witnesses for this purpose. In addition to making certain that all legal requirements with regard to the scheduling, advertising, notification, and opening the record of the case, this procedure will also give the Board the opportunity to explain the facts concerning the postponement and the reasons therefore to any interested parties who appear on the scheduled day pursuant to the advertisement.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman

WTH:e

cc: Robert J. Morris, et al
Mr. Gene Ray
John W. Hessian, III, Esq.
Mr. J. E. Dyer

4/9/81 - Notified the following of hearing scheduled for Tues., May 12, 1981, at 9:30 a.m.:

Robt. & Eliz. Morris
Louis E. Thomas
Edward C. Covahy, Jr., Esq.
J. Hessian, Esq.
N. Gerber
J. Howell
J. Dyer
W. Hammond
N. Commodari
J. Byrnes, III

4/15/81 - Notified the above of POSTPONEMENT and REASSIGNMENT on Thurs., April 23, '81, at 9:30 a.m.

4/23/81 - People's Counsel and Petitioner's Counsel to file Memos in 30 days, 10 days to reply'

COVAHEY & BOOZER
ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

April 13, 1981

AREA CODE 301
828-9441

Ms. June Holmen, Secretary
County Board of Appeals
Room 219 Court House
Towson, MD 21204

RE: Item No. 5
Robert J. Morris et al

Dear Ms. Holmen:

I have received notification that the above-captioned is set for Tuesday, May 12, 1981 at 9:30 a.m. Unfortunately, I have a criminal case scheduled in the District Court on that morning and request that I be immediately contacted with respect to rescheduling this matter on a date which is not otherwise in conflict with my court calendar. These proceedings should only take 15 minutes.

Thank you.

Very truly yours,

Edward C. Covahy, Jr.
Edward C. Covahy, Jr.

ECC/pa
cc: J.W. Hessian, Esquire

RECEIVED
BALTIMORE COUNTY
APR 14 4 44 PM '81
CC BY: J. L. S. D.

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 2, 1981

Edward C. Covahy, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

Re: Petition for reclassification from
R.C.5 to B.L - C.R. for
Robert J. Morris, et al
11824 Belair Road, Kingsville

Dear Mr. Covahy:

The Board has in hand your petition for reclassification of the property described therein. The petition seeks a change in the classification of the property from its present R.C. zoning to a zone other than one in the R.C. category. It would appear that this petition should not have been accepted for filing since the Baltimore County Zoning Regulations pertaining to reclassifications for R.C. zoned properties, specifically indicate, in Section 1A00.3.A.1, that:

"No petition to reclassify an R.C. zone or part thereof as other than an R.C. zone may be accepted for filing by the Zoning Commissioner unless -

a. The Capital Program, duly adopted Baltimore County master or comprehensive plans, and the 'county plan' required under Article 43, Section 387C of the Annotated Code of Maryland 1957, with amendments as codified in the 1971 Replacement Volume and 1974 Cumulative Supplement, show that the property under petition is to be serviced by public sewerage and water-supply systems within TWO years after the date the petition is submitted."

We have been advised by the Zoning Supervisor for Baltimore County that there is no indication within the public Capital Program that the property for which you seek reclassification is to be serviced by public sewerage and water-supply systems within the next two years, and we note that you did not attach to your petition any documentation to indicate that the property is, in fact, within an area to be serviced with sewerage and water supply within that time.

Page two - Edward C. Covahy, Esquire - April 2, 1981

The Board is prepared to issue an order dismissing your petition on the ground that it was improperly accepted. However, before doing so, the Board will extend to you the period of fifteen days within which to request, should you desire, a hearing before the Board limited to the question of why said petition should not be dismissed as proposed. If you desire such a hearing on that issue, please notify the Administrative Secretary of the Board within the fifteen day period following the date of this letter and a hearing date will be scheduled.

Very truly yours,

William T. Hackett
William T. Hackett, Acting Chairman

WTH:e

cc: Mr. J. Dyer

COVAHEY & BOOZER
ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER
MARK S. DEVAN
DOUGLAS W. RISER

April 6, 1981

AREA CODE 301
828-9441

William T. Hackett,
Acting Chairman
County Board of Appeals
Room 219 Court House
Towson, MD 21204

RE: Petition for reclassification from
R.C. 5 to B.L - C.R. for
Robert J. Morris, et al
11824 Belair Road, Kingsville

Dear Mr. Hackett:

With respect to your letter dated April 2, 1981, please treat this letter as a formal request for a hearing before the Board limited to the issue as succinctly outlined in your letter.

Thank you for your cooperation in scheduling this matter.

Very truly yours,

Edward C. Covahy, Jr.
Edward C. Covahy, Jr.

ECC/pa

RECEIVED
BALTIMORE COUNTY
APR 5 11 22 AM '81
CC BY: J. L. S. D.

Set 5/2 - 9:30

TO Office of Planning & Zoning Room 113 County Office Bldg. Towson, MD 21204	FROM COVAHEY & BOOZER ATTORNEYS AT LAW 614 BOSLEY AVENUE TOWSON, MARYLAND 21204 AREA CODE 301 828-9441
RE: R-82-65 SUBJECT: Robert J. Morris et ux - et al, Petitioner Gentlemen:	
Enclosed please find my client's check in the amount of \$51.31 re the above-captioned matter.	
DATE 11/24/81 ACCOUNT 01-662	
AMOUNT \$51.31	
RECEIVED Rosendale, Morris, Thomas, Inc. FROM: 2nd full page add for Case #R-82-65 (Morris) FOR: 5131	
DATE	
VALIDATION OR SIGNATURE OF CASHIER	
WHITE AND PINK COPIES ARE MAILED INTACT. WHITE COPY IS RETURNED WITH REPLY.	



BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 100456

DATE 8/19/81 ACCOUNT 041 01-662

AMOUNT \$50.00

RECEIVED Edward G. Cooney, Jr., Esquire
FROM Filing fee for Case #82-65, Item 5, Cycle 1 DATE _____

FOR _____

IS RETURNED WITH REPLY.

830418 20 500000

VALIDATION OR SIGNATURE OF CASHIER

TOWSON, MD.,-----August 27,-----, 1981
 THIS IS TO CERTIFY, that the annexed advertisement was
 published in THE JEFFERSONIAN, a weekly newspaper printed
 and published in Towson, Baltimore County, Md. ~~once to each~~
~~of one time~~ ~~successive weeks~~ before the 16th-----
 day of September-----, 1981, the ~~first~~ publication
 appearing on the 27th-----day of August-----
 1981-----

Cost of Advertisement, \$-----

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11 Date of Posting: 3/30/81
 Posted for: Petition for Rejuvenification
 Petitioner: Robert J. Harris, et al.
 Location of property: 11115 Belair Rd., 30' SE of
Jerusalem Rd.
 Location of Signs: front of property (#11924 Belair)
 Remarks: _____
 Posted by: Dean Coleman Date of return: 3/31/81
 Number of Signs: Signature



NOTE: 4/22/82

LOCATION: Northwest
corner of Belair Rd. 30 ft.
southeast of Jerusalem
Rd.

DATE & TIME:
Wednesday, September 16,
1981 at 10:00 A.M.

PUBLIC HEARING:
Room 218 Courthouse,
Towson, Maryland

The County Board of
Appeals for Baltimore
County, by authority of
the Baltimore County
Charter will hold a public
hearing:

Present Zoning: R C 5
Proposed Zoning: B 1.
ALL THAT PARCEL
OF LAND in the Eleventh
District of Baltimore
County, 11824 Belair
Road, Kingsville.

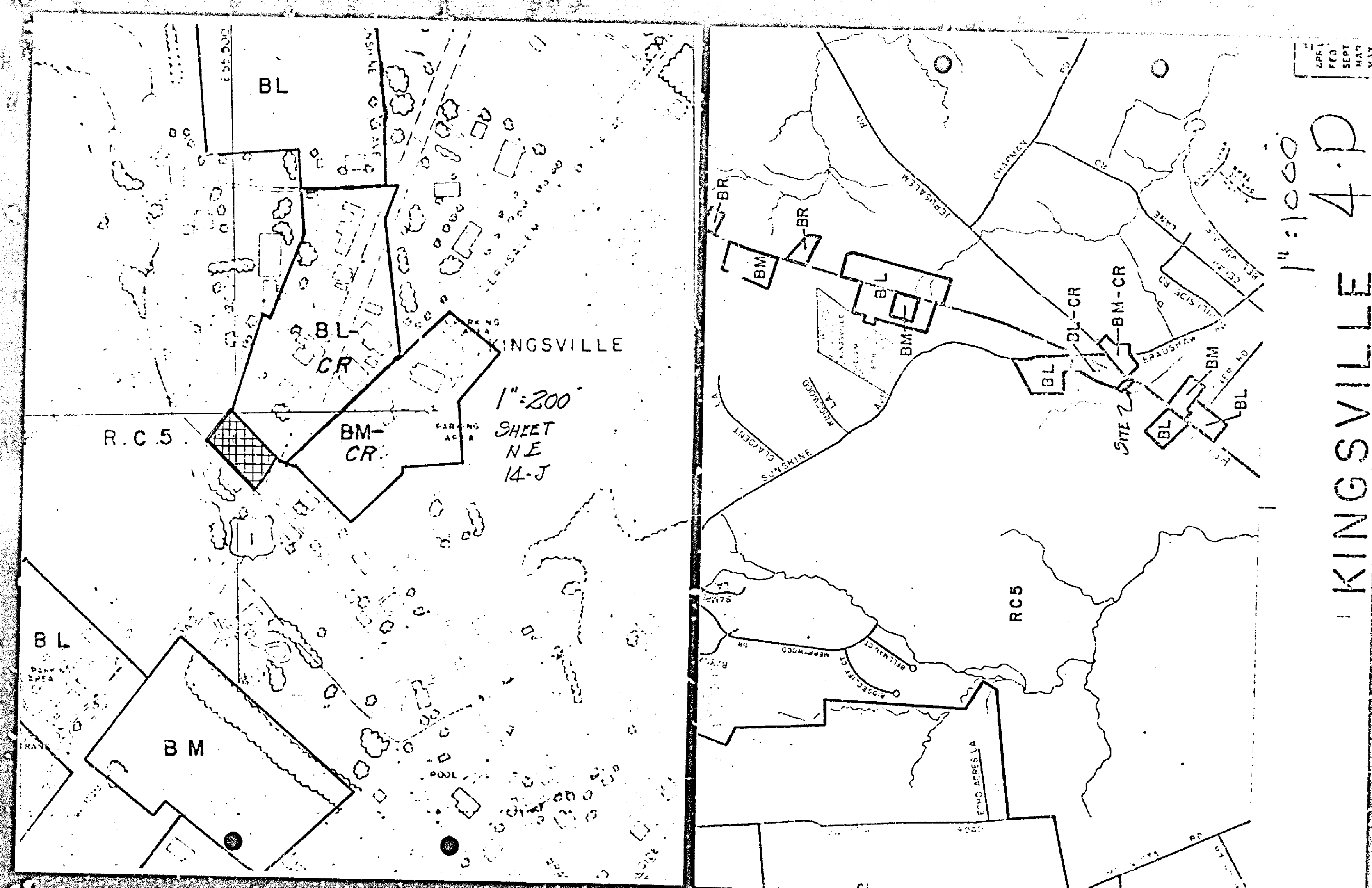
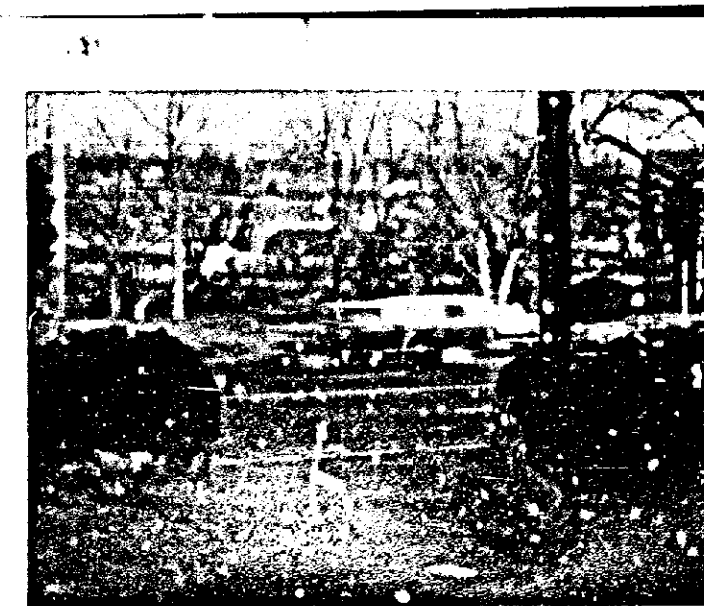
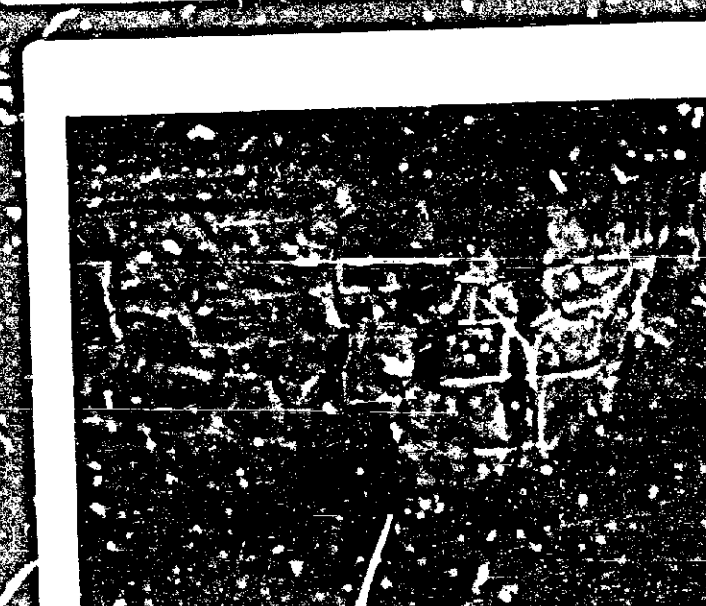
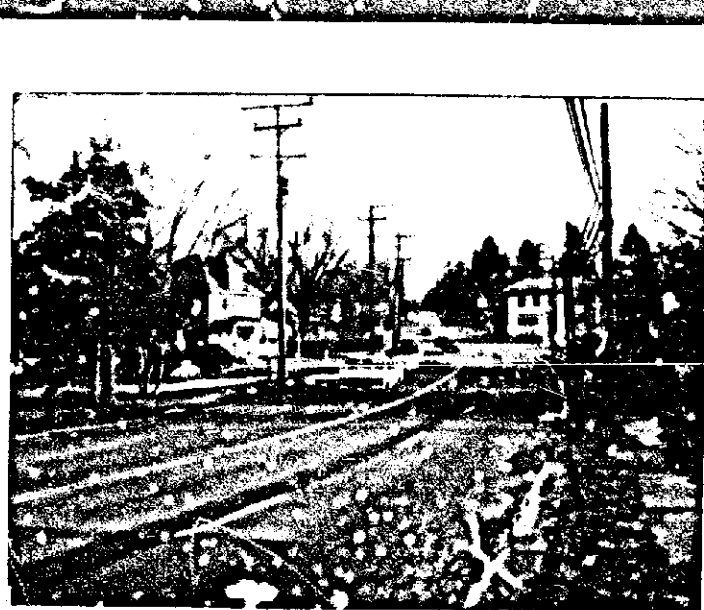
BEGINNING FOR THE
some of the residents
on the main road, at a point
distance 40 feet southwest
of the intersection of the
intersection of the paving
of Jerusalem
of the city of Belair
Road, thence binding on
the south line of the
Belair Road the three foot
owning corner
and then on the
Highway Administration
the line of the road
with a radius of 37
feet, south 43 degrees
feet, south 43 degrees
43.78 feet, and south 45
degrees 43 minutes
feet, south 45 degrees
leaving said road and run
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following courses and dis
tances, north 32 degrees
feet, south 32 degrees
17.57 feet, south 29 de
grees 58 minutes 58.61
feet, south 29 degrees
feet, south 33 degrees 57
feet, south 33 degrees 57
feet to the place of be
ginning.

Containing 0.363
of land more or less
of Robert Morris, et al.
of Robert Morris, et al.
shown on the plat
of the County of
the County of
D. C. Urshouse, Tor
Maryland.

Witness My Hand and
Seal this 24th day of
June, 1916 A. D.
1916 A. D.
County of
Maryland.

By Order of the
County Board of Assessors
of the County of

was inserted in the Times, a newspaper printed and published in Baltimore County, once in each of one successive weeks before the 22nd day of August, 1981.
S. B. Williams, Jr. Publisher.

[illegible]